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FOUNDATION AUTO HOLDINGS, LLC

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

FOUNDATION AUTO HOLDINGS, LLC, a  
Delaware limited liability company,

Plaintiff,

vs.

WEBER MOTORS, FRESNO, INC. d/b/a BMW  
Fresno, a California corporation; CJ'S ROAD TO  
LEMANS CORP. d/b/a Audi Fresno and Porsche  
Fresno, a California corporation; and  
CHRISTOPHER JOHN WILSON, an individual  
and resident of the State of California,

Defendants.

Case No. 1:21-cv-00970-JLT-EPG

**STIPULATED MOTION FOR LEAVE  
TO AMEND COMPLAINT;  
[PROPOSED] ORDER**

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1 WHEREAS, on August 3, 2021, defendants Weber Motors, Fresno Inc., CJ's Road to  
2 Lemans Corp., and Christopher John Wilson (collectively "Defendants") filed a Motion to Dismiss  
3 the Complaint (ECF 7) in the above-entitled action, pursuant to Fed. R. Civ. P. 12(b)(6);

4 WHEREAS, on September 14, 2022, the Court granted the Motion to Dismiss (ECF 37) and  
5 provided leave to amend within 45-days;

6 WHEREAS, within the Court's Order the Court stated that "Plaintiff alleges facts  
7 suggesting that Defendants anticipatorily repudiated the APA but does not allege the elements of an  
8 anticipatory breach of contract claim or that Defendants' repudiation excused its nonperformance."  
9 ECF 37, p. 9;

10 WHEREAS, the Court's Order provided leave to amend for the purpose of permitting  
11 "Plaintiff to cure its deficiencies related to its performance or excuse for nonperformance." *Id.*, p.  
12 10;

13 WHEREAS, plaintiff Foundation Auto Holdings, LLC ("Foundation") seeks to amend its  
14 Complaint, both to cure any deficiencies related to pleading performance or excuse for non-  
15 performance, and to specifically "allege the elements of an anticipatory breach of contract claim"  
16 under California law;

17 WHEREAS, the Court's Order does not permit leave to amend to add a cause of action,  
18 such that a motion is necessary. *See, e.g., Benton v. Baker Hughes*, No. CV 12-07735 MMM  
19 MRWX, 2013 WL 3353636, at \*3 (C.D. Cal. June 30, 2013), *aff'd sub nom. Benton v. Hughes*, 623  
20 F. App'x 888 (9th Cir. 2015) ("The addition of Benton's new claims therefore exceeds the scope of  
21 the leave to amend granted, and it is appropriate to strike the newly added claims on this basis");  
22 *Yau v. Deutsche Bank Nat. Tr. Co. Americas*, No. SACV 11-00006-JVS, 2011 WL 8326579, at \*2  
23 (C.D. Cal. Aug. 31, 2011) ("In order to assert claims that were not asserted in the FAC, Plaintiffs  
24 would have had to obtain Defendants' consent or the Court's leave");

25 WHEREAS, the Foundation and Defendants met and conferred pursuant to this Court's  
26 Standing Order section I(C), agreed on the form of a proposed First Amended Complaint, and wish  
27 to avoid unnecessary motion practice;

WHEREAS, Defendants consent to the form of the First Amended Complaint, attached hereto as Exhibit A, and reserve all rights in connection with the same;

NOW THEREFORE, Foundation and Defendants respectfully request the Court order as follows:

1. That Foundation be permitted leave to amend its Complaint, both to address the issues raised by the Court in its Order and to add a cause of action for anticipatory breach, a form of this First Amended Complaint being attached hereto as A.

Dated: October 28, 2022.

HOLLAND & KNIGHT LLP

/s/ Daniel Kappes

Daniel P. Kappes

Attorneys for Plaintiff  
FOUNDATION AUTO HOLDINGS, LLC

Dated: October 27, 2022.

MLG Attorneys at Law

/s/ Matthew Van Fleet (as authorized on 10/27/2022)

Matthew Van Fleet

Attorneys for Defendants  
WEBER MOTORS, FRESNO, INC., CJ'S ROAD TO  
LEMANS CORP., and CHRISTOPHER JOHN  
WILSON

**[SECTION INTENTIONALLY BLANK]**

**[PROPOSED] ORDER<sup>1</sup>**

The Court, having reviewed the Stipulated Motion for Leave to Amend, and finding good cause therefore, grants Foundation Auto Holdings, LLC leave to file its First Amended Complaint, as set forth in Exhibit A to the stipulation.

IT IS SO ORDERED.

Dated: **November 1, 2022**

  
UNITED STATES DISTRICT JUDGE

Holland & Knight LLP  
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<sup>1</sup> Pursuant to Local Rule 143(b), the proposed order consists “of an endorsement on the stipulation of the words, “IT IS SO ORDERED,”